

**CALENDAR ITEM
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**RESOLUTION OPPOSING THE ABOLITION OF THE STATE LANDS
COMMISSION AS PROPOSED IN THE CALIFORNIA PERFORMANCE
REVIEW REPORT**

SUMMARY

The reorganization plan released by the California Performance Review (CPR) proposes operational enhancements and reorganization for California's State Government. Included in the later is a proposal to abolish the California State Lands Commission (Commission). The Commission's functions and staff would be primarily distributed to three new state departments.

This proposal would have adverse impacts on public, applicant and media access to decisions affecting the uses of public trust lands. The Commission's implementation of trust law is already efficient and cost effective. There is a high likelihood that the proposed reorganization of the Commission's functions would be less efficient and result in poor management of trust lands. The reorganization is especially ill advised in that it would revert management of trust lands to a system that previously failed, leading to the establishment of the Commission.

Some of the operational enhancements recommended by the report would benefit State government and the public and should be implemented by the Commission.

BACKGROUND

California Performance Review

The Governor established the CPR to "restructure, reorganize and reform state government to make it more responsive to the needs of its citizens and business community." Since February 2004, 275 temporarily assigned state employees have been gathering data for the CPR's report and recommendations.

The CPR's 2,500-page report was released on August 3, 2004. It focuses on four categories: 1) Executive Branch Reorganization, 2) Program Performance Assessment and Budgeting, 3) Improved Services and Productivity, and 4) Acquisition Reform. The first and third categories are the more significant for the Commission.

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In late June, the Governor appointed a 21 member CPR Committee to conduct public workshops and to make recommendations on the report. The Committee will hold six hearings throughout the state, the last to be on September 24. While the exact format of these hearings is not known, it appears that much of the hearings will be devoted to presentations and testimony by invited witnesses.

Implementation of the report can occur in several ways. With respect to the reorganization portions, the Governor is expected to proceed pursuant to the procedures for Reorganization Plans as provided in sections 8523 and 12080 et seq. of the Government Code. These sections provide for submission of the Plan to the Little Hoover Commission at least 30 days prior to submittal of the Plan to the Legislature. This Commission must report on its review within 30 days of the Plan submittal to the Legislature. The Governor could make changes to the plan at any stage until it is submitted to the Legislature. After submittal to the Legislature, the Plan would be assigned to appropriate committees for review. Unless one of the houses of the Legislature disapproves of the Plan, it would take effect in 60 days. The Legislature cannot amend the Plan. If the Plan does take effect, then the Legislative Counsel has 90 days to develop legislation to modify statutes in accordance with the Plan, but this legislation is not a prerequisite to Plan implementation. Other portions of the report would also have to be implemented through legislation.

Implementation of the report recommendations could also occur entirely through legislation, without the submission of a Reorganization Plan. This would enable negotiation and amendment to resolve issues. The report could also be implemented through a ballot initiative.

Reorganization Plan Abolishes the State Lands Commission

The Reorganization Plan proposes to abolish the State Lands Commission. The Commission's functions would be distributed as follows:

- 1) Management of public trust lands – Natural Resources Department
- 2) Ballast Water Management – Environmental Protection Department
- 3) Oil Spill Prevention and Response Program – Environmental Protection Department
- 4) Mineral leasing activity related to energy – Infrastructure Department
- 5) Other mineral leasing – Natural Resources Department

ANALYSIS

Role of the State Lands Commission

The State Lands Commission, composed of the Lieutenant Governor, the State Controller, and the Director of Finance, manages tide and submerged lands under state waters along the coast and under navigable inland waters, and school lands, which are dedicated to revenue production for educational purposes. The Commission applies the public trust doctrine to insure that these lands are used for water-related purposes including protection of the environment, public recreation, and economic benefit to the citizens of California. The Commission expects to generate \$100 million in revenues to the state this fiscal year. The Commission manages close to 4,000 leases of public trust lands.

Adverse Impacts from Abolition of the Commission

The abolition of the Commission would not help the state meet the Plan's goals of greater efficiency and to make state government "more responsive to the needs of its citizens and business community." Specifically:

- 1) Public Access would be eliminated to decisions on Public Trust lands and other Commission matters. The tide and submerged lands and school lands administered by the Commission are lands held in trust for the public and are required to be used for statewide benefit. The Commission makes all of its decisions after public input at duly noticed, open public hearings. The Plan would move these decisions to state officials who would make them behind closed doors.
- 2) No Oversight of former Commission programs. The Commissioners, not bureaucrats, make the final decision on staff recommendations. The Commissioners are available to the public, applicants and others who believe the staff is not correctly applying the law or is delaying project processing. The Plan would eliminate this oversight.
- 3) No accountability to the public in administration of public's lands. Two of the three Commissioners are statewide elected officials – the Lieutenant Governor and the State Controller. These officials make their decisions on the Commission in light of the public scrutiny they receive and their accountability to the public in the next election. The Plan would place

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decisions on public lands in several superagencies that are not likely to be as accessible or responsive to the public will.

- 4) Plan would return administration of Public Trust lands to a system that led to corruption. The State Lands Commission was established in 1938 after evidence was uncovered of corruption in the administration of leases for oil development on state lands (see attached article). Called into a special session to respond, the Legislature established the Commission to prevent future abuses. For the last 66 years, the Commission's management has fostered appropriate uses of Public Trust lands while earning over \$7 billion in revenue for the State. The Plan would return to the former system of closed door, bureaucratic administration of Public Trust lands.
- 5) Plan would create inefficiencies in administration of public lands. The Plan splits administration of public trust lands between several agencies. All of these lands must be administered pursuant to the public trust doctrine, a complex legal doctrine. The Plan would require redundant development of public trust expertise in several agencies and lead to inconsistent policies and potentially allow activities that would be incompatible with one another.
- 6) Existing Commission is organizationally and fiscally efficient. The Commission brings together staff that has expertise on public trust policy, minerals management, management of 4,000 leases, and oversight of ports. Each of its existing functions is related to the others and benefits from having the same staff involved. All of the work now performed by Commission staff would still have to be performed under the Reorganization Plan. Splitting up divisions with related functions would require the hiring of duplicative staff to assure that the expertise now commonly available at the Commission would be available to the separated divisions and would reduce efficient coordination of related functions. The Commission's staff has already been consolidated, being reduced from 249 in 1990 to 203.5 in 2004. Of these remaining 203.5 positions, 101 are involved with new programs such as oil spill prevention and ballast water management – core staff has been reduced to 102.5 positions. Finally, as public officials, beyond their existing salary, the Commissioners do not receive any payment for participating in Commission meetings. Thus no additional monies would be saved by abolishing the Commission.

- 7) Reorganization Plan proposals are less efficient than present Commission. The Plan proposes to join the Commission's Oil Spill Prevention Program with the Department of Fish and Game's response program. These existing programs do not overlap and they benefit from their present organization locations. DFG's program plans for and responds to oil spills. The most important impact to consider in responding to spills is environmental. DFG's core expertise in the environment and biology fits well with this responsibility. In contrast, the Commission's program of spill prevention focuses on engineering and procedures. The Commission's engineering expertise, which also is applied to management of its oil leases and the Commission's day-to-day relationship with ports, makes the Commission the appropriate place for Oil Spill Prevention.

Similarly, the Commission's experience in negotiating, appraising and doing complex boundary line work on leases provides in-house expertise that is supportive of the Commission's management of its oil and gas leases. The Plan would send this function to the new Infrastructure Department, which otherwise does not have experience or expertise in revenue leases or oil and gas leases.

- 8) Reorganization Plan replays previously rejected reorganization proposals. In 1995, Governor Wilson proposed in a Reorganization Plan to break off State Lands Commission energy functions in a manner not unlike that proposed in this Plan. However, after hearings on Governor Wilson's plan before the Little Hoover Commission, the Governor deleted the State Lands Commission from the reorganization before resubmitting the rest of his plan regarding state management of energy issues. It is unfortunate that this year's CPR Plan is revisiting proposals previously reviewed and rejected.

Report's Recommendations for Operational Enhancements Should Be Considered by the Commission.

In addition to the Reorganization Plan, the CPR Report contains a number of recommendations to improve efficiency and public service. Among others, they include:

- Updating websites
- Enabling online application completion and submission
- Including customer service as part of strategic planning

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- Booking airfares on line.
- Periodic review of vehicle needs and inventories
- Insuring maintenance of digital documents
- Improving statewide technology management
- Develop statewide program for training and career development

These and other recommendations are consistent with the direction the Commission has given staff and many of the improvements already made in Commission operations. Staff believes that additional improvements can be made – unilaterally in our functions and cooperatively with other State agencies.

RECOMMENDED ACTION

Staff recommends that the Commission adopt the attached Resolution. This resolution opposes the abolition of the Commission. It also directs staff to take the necessary actions to implement the operational enhancements recommended in the report that would improve efficiency, productivity and public service.